IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL NO. 203 OF 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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CIVIL SURGEON, GOVERNMENT HOSPITAL, RAJKOT & ORS. - Appellant(s)

Versus

NARENDRA ICHHASHANKER MEHTA - Respondent(s)

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Appearance :
SHRI DIPEN DESAI, AGP for Appellant(s).
SHRI J.J. YAJNIK for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 03/10/2006

ORAL JUDGMENT

Heard Shri Dipen Desai, learned Counsel for the appellants, and Shri J. J. Yajnik, learned Counsel for the respondent.

2. This Second Appeal, at the instance of the appellants, Civil Surgeon and two others, is against the Judgement and Decree dated 24th February, 1986 passed in Regular Civil Appeal No.120 of 1985 by the learned District Judge, District-Rajkot, Rajkot, whereunder he had reversed the Judgement and Decree granted by the learned 2nd Joint Civil Judge (S.D.), Rajkot on 27th September, 1985 in Regular Civil Suit No.947 of 1984.

3. The plaintiff had filed the suit submitting, *inter alia*, that the order of his termination was contrary to law as he had been unceremoniously removed from the services though he was a temporary employee. It was also submitted that the order terminating him from service/removing him from service was stigmatic and as no opportunity of hearing was given to him, the order deserved to be nullified and quashed.

3.1 The State Government appeared in the matter and while justifying the order of removal, to meet the pleadings raised in the plaint, stated that the plaintiff was not discharging his duties properly, he was not a competent person, therefore, his tenure was brought to an end.

3.2 The learned trial Court, after hearing the parties, came to the conclusion that the respondent-Authority had a justified cause to bring an end to the employment and there was nothing wrong in it. The first Appellate Court, taking a contrary stand, came to the conclusion that the present respondent though has been removed by an innocuous order, but, in fact, there were reasons behind it and the order, in fact, is stigmatic. It, accordingly, allowed the appeal and decreed the suit.

The appellants, being aggrieved by the said judgement and decree, are before this Court.

4. On 30th December, 1986, the appeal has been admitted for hearing on the following substantial questions of law:

> "(1) *Whether the plaintiff's service was terminated under the circumstances which amount to stigma?*
>
> (2) *Whether the plaintiff was entitled to the protection of Art.311 of the Constitution of India?*"

5. Shri Dipen Desai, learned Counsel for the appellants, submits that a plain look of the order in

dispute would show that it was not stigmatic, but, the appellants were required to give reasons because the plaintiff wanted reasons and if, in replying the pleadings, the defendants gave the reasons, which reasons also were not stigmatic, then, it could not be held in favour of the plaintiff that the order was bad. He also submits that so far as protection under Article-311 of the Constitution of India is concerned, the same would not be available to a person, who makes his entry from back door and even in a given case where his services are found to be unsatisfactory.

6. Shri Yajnik, learned Counsel for the respondent-plaintiff, however, submits that the learned first Appellate Court was absolutely justified in decreeing the suit.

7. So far as the first question is concerned, the answer to the same would depend upon the language employed in the order removing the plaintiff from services. The order does not attribute any reasons, nor does the order say anything bad against the interest of the plaintiff, nor does it say that the plaintiff was a dead wood or he was useless or worthless. Within the authority conferred upon the defendants/employers, notice pay was given to the plaintiff and thereafter, they had

issued the order removing the plaintiff from services. If the plaintiff was making allegations against the defendants and the defendants, in their turn, were justifying their action by pleading something additional, then, it cannot be said that such pleadings should be read in the order of removal. The first question must be answered in favour of the appellants and it must be held that the order does not cast any stigma against the plaintiff.

8. So far as the second question is concerned, the Constitution Bench of the Supreme Court in its recent judgement in the matter of ***Secretary, State of Karnataka & Ors. vs. Umadevi (3) & Ors.,*** [(***2006***) ***4 S.C.C. 1***], has observed that the probationers or temporary employees or the persons, who have made their entry from back door would not be entitled to any relief from any Court irrespective of the length of service which they have enjoyed. In view of the authoritative pronouncement of the Supreme Court, the second question is also required to be decided in favour of the appellants and it must be held that in the present set of facts, the plaintiff would not be entitled to protection of Article-311 of the Constitution of India. The appeal deserves to and is, accordingly, allowed. The Judgement and Decree passed by the first Appellate Court are set aside and that of the

learned trial Court are restored. Let a decree be framed accordingly. No costs.

[R.S.Garg, J.]

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